

SERVED: September 29, 1993

NTSB Order No. EA-3984

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 21st day of September, 1993

_____)	
DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12809
v.)	
)	
CHARLES G. KALKO,)	
)	
Respondent.)	
_____)	

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the notice of appeal in this proceeding because it was not, as required by Section 821.47 of the Board's Rules of Practice, 49 CFR Part 821,¹ filed within 10 days after the law judge served a written initial decision and order on July 13, 1993.² In an answer opposing the

¹Section 821.47 provides as follows:

"§821.47 Notice of Appeal.

A party may appeal from a law judge's order or from the initial decision by filing with the Board and serving upon the other parties (pursuant to §821.8) a notice of appeal within 10 days after an oral initial decision or an order has been served."

²The law judge affirmed an order of the Administrator suspending respondent's private pilot certificate (No. 141441222) for his alleged violations of sections 91.119(a) and (c) and 91.13(a) of the Federal Aviation Regulations, 14 CFR Part 14.

motion and urging the Board to accept the notice of appeal out of time, the respondent, by counsel, contends that his tardiness should be excused. For the reasons discussed below, we do not agree that respondent has demonstrated good cause for the late filing. See Administrator v. Hooper, NTSB Order EA-2781 (1988).

Consequently, the appeal will be dismissed on the Administrator's motion.

The certified mail containing the law judge's decision was picked up from the Post Office (by counsel's wife) on July 19, while respondent's counsel was away from his office on a four-day trip. Respondent's counsel acknowledges that he became aware of the decision following his return on July 23, the date the 10-day filing period expired. Nevertheless, a notice of appeal was not filed until July 28, some five days later.

We agree with the Administrator that respondent's counsel's status as a sole practitioner would not justify a failure to take such steps as may be necessary to insure that a client's appeal rights would be protected during an absence from his law offices.

See Administrator v. Givens, NTSB Order EA-2928 (1989). At the same time, we think it clear that the notice was not filed late because respondent's counsel was away from his office; it was filed late because respondent's counsel did not act promptly once he received actual knowledge, within the filing period, of the decision.³ In any event, we perceive no basis in the circumstances described by counsel for concluding that the tardiness of the filing is excusable for good cause shown.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted;
2. The respondent's Motion to Accept Appeal Nunc Pro Tunc is denied; and
3. The appeal is dismissed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

(..continued)

The law judge, however, modified the Administrator's order to provide for a 120, rather than a 180, day suspension period.

³Counsel's efforts to demonstrate justification for the late filing do not establish that the notice of appeal could not have been filed on the 23rd of July.